

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Paper No. 10

Serial Number: 08/506,851
Filing Date: 07/25/95
Appellant(s): ANTHONY SMITH

MAY 21 1997

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For Appellant

EXAMINER'S ANSWER

1. This is in response to appellant's brief on appeal filed 3/21/97.

2. (1) *Real Party in Interest*

3. A statement identifying the real party in interest is contained in the brief.

4. A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

5. (3) *Status of Claims*

6. The statement of the status of the claims contained in the brief is correct.

7. This appeal involves claims 9-20.

Note Appellant has withdrawn claims 1-8 from this appeal.

8.(4) **Status of Amendments After Final**

9. The amendment after final rejection filed on 2/3/97 has not been entered.

10.(5) **Summary of Invention**

11. The summary of invention contained in the brief is correct.

12.(6) **Issues**

13. The appellant's statement of the issues in the brief is correct.

14.(7) **Grouping of Claims**

15. Appellant's brief includes a statement that claims 9-20 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

16.(8) **Claims Appealed**

17. The copy of the appealed claims contained in the Appendix to the brief is correct.

 The correct copy is found in Appendix A. Appendixes B and C should be disregarded as they contain claims not approved for entry.

18.(9) **Prior Art of Record**

19. The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

 5,117,511 Smith 6/2/92

 3,192,537 Coffman et al 7/6/65

20. Claims 13 and 17 are rejected under 35 U.S.C. § 102 (b) as being clearly anticipated by Smith.

Claims 9-12 and 14-20 are rejected under 35 U.S.C. § 103 as being unpatentable over Smith in view of Coffman et al.

Smith teaches the receptor at 20 which has "rinse means" at 25 and "tubular means" 27. There is no showing in Smith of a "waste liquid storage compartment"; however, column 6, lines 28-35 suggest that a waste "collection site" can be provided. In light of this suggestion it would have been prima facie obvious to provide Smith with a waste collection tank such as taught by Coffman et al at 50. Re: claims 10 and 11, see Fig. 4 of Smith. Re: claim 12, the term "positionable over" fails to define structure that distinguishes over the art here in that any device can be lifted to such a height and any automobile such as disclosed by Smith may be positionable over a drain.

Claim 14 is rejected as claim 9 supra. Claim 15 is met by Smith at 23. Re: claim 17, the term "cart" imparts no structure not shown by Smith. Re : claim 18, to provide for a portion of the receptor to be absent as set forth at 130 of Coffman et al would have been obvious in order to accommodate the user. Claims 19 and 20 are met by Coffman et al as well and to employ this scheme in Smith would have been obvious to the ordinary artisan as an expedient of choice in design.

21. This examiner's answer does not contain any new ground of rejection.

22. (13) *Response to argument*

The arguments on page 5, paragraph B are not well taken in that Appellant mis-quotes the text of Smith at col. 5, lines 38-42. The text clearly states that the funnel may be made of a composition similar to that of the tubing and line 38 lists "rubber" as one of the materials, the same material as mentioned on page 8, line 7 of the instant specification. The base is the bottom of the funnel, the hollow wall is seen at 26 and openings at 22. Re: claim 17, the term "cart" is deemed met by the wheeled nature of 10 and col. 3, lines 53-54 meets the remainder of claim 17.

Appellant on page 6 argues for the claim 12 recitation "at a height enabling it to be discharged into a toilet bowl as well as into an underlying conventional drain". This phraseology is met by Smith as pointed out in the rejection supra principally because it fails to import any height parameters to the waste tank. Merely pumping out the tank in a conventional manner would meet this claim.

With respect to the arguments on page 8, lines 9-10 i.e. the sought after suggestion for combinability, what could be more explicit than column 6, lines 28-35 of the Appellant's very own patent? In light of this, the citations of case law and authorities on page 8 would not be persuasive.


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23. For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Phillips/mm
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May 20, 1997


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